

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE DAVID M. GLOVER

DIVISION II

CA08-437

December 10, 2008

WAL-MART STORES, INC. and
CLAIMS MANAGEMENT, INC.
APPELLANTS

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [F412812, F612506]

V.

LAVADA PARKER

APPELLEE

REVERSED AND REMANDED

In this workers' compensation case, the Commission affirmed and adopted the ALJ's opinion that appellee, Lavada Parker, sustained compensable injuries to her right wrist and right thumb on November 30, 2004, and to her low back on November 7, 2006, and that she was entitled to related medical benefits. Appellants, Wal-Mart Stores, Inc., and Claims Management, Inc., appeal, raising three points: 1) whether there is substantial evidence supporting the Commission's determination that appellee sustained a compensable right-thumb and right-wrist injury on November 30, 2004; 2) whether there is substantial evidence supporting the Commission's determination that appellee sustained a compensable low-back injury on November 7, 2006; 3) whether there is substantial evidence to support the Commission's determination that appellee is entitled to all

reasonable and necessary medical expenses. We reverse and remand this case to the Commission for specific findings concerning the compensability of appellee's right thumb/wrist injury and related medical expenses.

Standard of Review

When reviewing a decision of the Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the findings of the Commission and affirm that decision if it is supported by substantial evidence. *Finley v. Farm Cat, Inc.*, ____ Ark. App. ____, ____ S.W.3d ____ (Oct. 22, 2008). Substantial evidence exists if reasonable minds could reach the Commission's conclusion. *Id.* The issue is not whether the appellate court might have reached a different result from the Commission, but rather whether reasonable minds could reach the result found by the Commission. *Sierra v. SIF Claims*, ____ Ark. ____, ____ S.W.3d ____ (Sept. 25, 2008). If so, the appellate court must affirm the Commission's decision. *Id.* In undertaking our review of a Commission decision, however, we do not conduct a *de novo* review of the record or make findings of fact that the Commission should have made but did not. *Sonic Drive-In v. Wade*, 36 Ark. App. 4, 816 S.W.2d 889 (1991). Our function is to review the sufficiency of the evidence to support the findings that the Commission does make, and when it fails to make specific findings on an issue, it is appropriate that the case be reversed and remanded for the Commission to make such findings. *Id.*

Right Wrist/Right Thumb

For their first point of appeal, appellants contend that appellee had a pre-existing injury to her right wrist/thumb and that “there are no objective findings of injury which support a causal connection with [her] work incident and her resulting need for treatment.” Appellants’ major contention is that there was no credible medical evidence to support a finding that appellee suffered an acute injury that was causally related to the work incident that occurred on November 30, 2004, as opposed to the ongoing presence of her pre-existing problem.

Objective medical findings are not necessary to establish causation, but as our court explained in *Liaromatis v. Baxter County Regional Hospital*, 95 Ark. App. 296, 299-300, 236 S.W.3d 524, 526-27 (2006):

We agree with appellant that objective medical evidence is not essential to establish the causal relationship between the injury where objective medical evidence establishes the injury's existence, and a preponderance of other non-medical evidence establishes a causal relation to a work-related incident. *See Wal-Mart Stores v. Van Wagner*, 337 Ark. 443, 990 S.W.2d 522 (1999); *Wal-Mart Stores v. Leach*, 74 Ark. App. 231, 48 S.W.3d 540 (2001). *However, we disagree with appellant's premise that the medical evidence must merely establish the existence of the injury. The question is not whether there are new objective findings, but whether there is a new compensable injury. It is the injury for which appellant seeks benefits that must be proved with objective medical findings.*

*Therefore, when appellant sought benefits for an alleged injury sustained on July 26, 1999, it was his burden to prove that the injury was caused by the events on that day. This burden necessarily required that he present objective medical findings establishing an injury suffered on that day in addition to his nonmedical evidence offered to establish a causal relation to the work-related incident. See Ark. Code Ann. § 11-9-102 (1997 & Supp. 2005). A compensable injury must be established by medical evidence supported by objective findings, and medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. See *Smith-Blair, Inc. v. Jones*, 77*

Ark. App. 273, 72 S.W.3d 560 (2002). Speculation and conjecture cannot substitute for credible evidence. *Id.*

Appellant's failure to present objective medical findings of an injury sustained in July 1999 also precludes recovery for any aggravation of a preexisting condition. An aggravation is a new injury resulting from an independent incident. *Smith-Blair, Inc. v. Jones, supra.* Being a new injury with an independent cause, an aggravation must meet the requirements for a compensable injury. *Id.*

The medical evidence in this case established that the condition of appellant's lumbar spine after the July 1999 incident was virtually unchanged from the condition diagnosed by tests performed in 1996. Therefore, the Commission did not err by finding that appellant had failed to establish a compensable injury, and its requirement that objective medical findings establish an injury occurring on July 26, 1999, did not impose a requirement in addition to our statutory prerequisites for benefits.

(Emphasis added.)

Here, we are not holding that appellee failed to prove a compensable right wrist/thumb injury and the need for related treatment. Instead, we are holding that we cannot properly review that issue because the Commission's opinion does not make the necessary specific findings, based on the evidence presented and tying the events of November 30 to a new injury that resulted in the need for treatment. And without such specific findings, we have nothing to review but a detailed account of the evidence.

There was clearly non-medical evidence supporting a causal connection between appellee's work activities and the sudden onset of pain in her right wrist/thumb. At the September 11, 2007 hearing before the ALJ, appellee testified that she was forty-nine years old; that she had worked at Wal-Mart for eighteen years; that she became a department

manager within the first year; and that as a department manager, she used a hand-held computer to accomplish a lot of tasks such as placing orders and doing price changes. She explained that on November 30, 2004, they had gone through their “blitz day,” which is the day after Thanksgiving; that there was a lot of merchandise that had to be moved around; that they needed to move some huge game tables, including pool tables, foos-ball tables, and ice hockey tables, that were sitting on three pallets; that she got another associate to help her; that as they were picking up a table, appellee told the other associate to “hang on” because she felt some pain in her right wrist and it went up her arm; and that she tried to shake off the pain, but when they lifted the table again, the same pain returned. She described the pain as constant, going “all the way up” into her elbow, thumb, and wrist and that later in the day her fingers went numb. She said that she went to the personnel office and reported what had happened with her hand to Tammy Fisk.

She said that appellants sent her to a doctor in Huntsville and that the doctor told her he thought she had tendonitis and sent her back to work. She testified that she did not go to another doctor immediately, but that when the pain did not subside or go away she saw Dr. James Moore. She said that from the time of the lifting incident, her hand continued to hurt; that she could not hold on to things; that she experienced a lot of pain and constantly dropped things; and that the pain was “always shooting up [her] arm and [her] thumb.” She said that prior to the lifting incident, she had had no problems with carpal tunnel; she had experienced some pain in her right thumb four-and-a-half to five years prior to the lifting incident, but that after wearing a splint she had not experienced

any more problems until the November 30 incident. Appellee explained that Dr. Moore had her hand tested for carpal tunnel and then did surgery on her hand; that she was off work for four to six weeks after the surgery; and that she then returned to work.

There were also clearly objective medical findings of the existence of carpal-tunnel syndrome and problems with appellee's thumb. Dr. Moore's medical notes/findings can be summarized with the following excerpts:

1) Clinic Note of January 17, 2005 – Lavada Parker is seen in the clinic today. She is a 46 year old white female who was moving heavy foosball tables 11/30/04; had sharp pain in base right thumb. She had a thumb spica splint at one time for osteoarthritis in CMC joint, it was improved since. She did well with that up until this event. She has had some tingling in right MF and RF. She has had a hand held computer for 16 years in her work. She is right handed.

PHYSICAL EXAMINATION: Pain and crepitus in CMC joint base right thumb. No decreased sensation. Negative Tinel's.

X-RAYS: Arthritic CMC joint right thumb.

IMPRESSION: Osteoarthritis CMC joint right thumb. R/O carpal tunnel syndrome.

DISPOSITION: Schedule median nerve conduction study across right wrist. Return after nerve conduction study.

2) Clinic Note of January 24, 2005 – Median nerve conduction study abnormal in motor. Decreased sensation in MF and radial ½ RF. Negative Tinel's. Pain and crepitus in CMC joint.

DISPOSITION: Schedule "LRTI procedure right thumb CMC joint and carpal tunnel release right hand."

3) North Hills Surgery Center – Selective Admission Notes of February 25, 2005 –

ORTHOPEDIC EXAMINATION: The orthopedic examination reveals pain and crepitus in the carpometacarpal joint at the base of the right thumb, good range of motion of the joints. There is decreased sensation of the middle finger and radial half of the ring finger with a positive Tinel's sign over the median nerve of the wrist level. Thenar muscle function is intact. X-rays reveal significant osteoarthritis of the carpometacarpal joint at the base of the right thumb with spur formation and decreased joint space.

4) Selections of Operation Notes of February 25, 2005 –

OPERATIVE PROCEDURE: 1. Ligament reconstruction tendon interposition arthroplasty of the carpal metacarpal joint right thumb using flexor carpi radialis tendon. 2. Carpal tunnel release, right hand.

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DESCRIPTION OF PROCEDURE: ... [Re: thumb] There was found to be a small loose body and a very large loose body present. These were removed.

.....

[Re: wrist] The median nerve was found to have significant compression. It was fully decompressed throughout the length through the carpal tunnel.

5) Selected portions of Moore's letter of 5/22/2007 to appellee's counsel –

It has been documented in our literature that it is not uncommon with osteoarthritis, if you are doing corrective surgery, to also at that time decompress the median nerve at the wrist level, and I discussed this with her. It was our plan to reconstruct the carpometacarpal joint at the base of her right thumb, and also perform a carpal tunnel release at that time. I did discuss with her the etiology of this problem, and told her that I felt like this was an osteoarthritic joint, it had been osteoarthritic for some time, and it had been aggravated by her injury of 11/30/2004, but not caused by the injury of 11/30/04.

.....

She did have positive findings of both problems at the time of surgery.

.....

It is my opinion, and has been from the beginning that the primary cause of her painful joint is primary osteoarthritis of the carpometacarpal joint. It is the predominant reason that she had the arthritis, not related to injury, but over 50% related to just wear and tear osteoarthritis.

In regards to the carpal tunnel syndrome and the lateral tennis elbow, those are both issues that can be related to any number of etiologies, certainly, repetitive use is one of the factors that can be a part of carpal tunnel syndrome or lateral tennis elbow. ... Her carpal tunnel was confirmed objectively by nerve conduction studies by the neurologist. It still would be what we consider a fairly mild change. However, at the time of doing the reconstructive surgery, and with decreased sensation, I felt it would be better to go ahead and get both issues resolved at the same time. If she had only those findings of carpal tunnel syndrome, she may not have been operated on at that point in time, but other conservative measures followed, except for the fact that she was going to have surgery and it would be better to take care of both problems at the same time, in my opinion.

.... I am unable to tell you that the work of holding the hand held computer for years didn't have some bearing on some episodes of tennis elbow and carpal tunnel syndrome, but it certainly had not been documented over a period of time and other conservative measures followed in regards to the carpal tunnel syndrome.

The ALJ's opinion recounted in detail the evidence that was presented at the hearing. However, in concluding that appellee had proven by a preponderance of the evidence that she had sustained a right thumb/right wrist injury on November 30, 2004, while working for Wal-Mart, and that she was therefore entitled to all medical treatment for her right-thumb and right-wrist carpal-tunnel problems, the opinion merely stated:

After a complete review of this entire record, I find that the claimant has proven by a preponderance of the evidence that she sustained an exacerbation of a pre-existing thumb condition as well as carpal tunnel syndrome on November 30, 2004, while working for the respondent. The claimant has testified to a specific incident of lifting heavy gaming tables with another associate and after experiencing pain in her right hand and arm she reported this incident to the respondent. Tests revealed that the claimant had a right thumb joint problem as well as mild carpal tunnel syndrome. The medical records have set forth and the claimant has testified that five years prior to her November 30 injury she had sought treatment for her right thumb. These problems with conservative treatment resolved and it was not until the lifting incident on November 30, 2004, that the claimant exacerbated her pre-existing condition necessitating medical treatment. The respondents, therefore,

should pay for all medical treatment for the treatment of this claimant's right thumb and right carpal tunnel problems.

As we explained in *Wright v. American Transportation*, 18 Ark. App. 18, 20-21, 709 S.W.2d 107, 109 (1986), "if findings and supporting evidence are not set out in the record of the Workers' Compensation Commission, when the cause comes before the court for review, the review function becomes meaningless." A satisfactory specific finding of fact is

a simple, straightforward statement of what happened. A statement of what the Board finds has happened; not a statement that a witness, or witnesses, testified thus and so. It is stated in sufficient *relevant* detail to make it mentally graphic, i.e., it enables the reader to picture in his mind's eye what happened. And when the reader is a reviewing court the statement must contain all the specific facts relevant to the contested issue or issues so that the court may determine whether the Board has resolved those issues in conformity with the law.

Id. at 21, 709 S.W.2d at 109. When the Commission fails to make specific findings upon which it relies to support its decision, it is appropriate to reverse and remand the case in order for those findings to be made. *Id.*

Here, for example, missing from the ALJ's opinion is a specific finding that ties the medical evidence to the conclusion that the November 30 lifting incident exacerbated appellee's pre-existing thumb condition and also resulted in her carpal-tunnel problems, thereby necessitating treatment. Also missing is a specific finding that supports the conclusion that appellants should pay all medical expenses related to appellee's right carpal-tunnel problems in light of Dr. Moore's observation that if she had only had findings of carpal-tunnel syndrome, "she might not have been operated on at that point in time . . .

except for the fact that she was going to have surgery and it would be better to take care of both problems at the same time”

As noted previously, in *Sonic Drive-In, supra*, we explained that this court does not review decisions *de novo* on the record or make findings of fact that the Commission should have made but did not. Our function is to review the sufficiency of the evidence to support the findings that the Commission does make. *Id.* Here, as in *Sonic Drive-In*, while there may be evidence in the record to support the Commission’s conclusions, neither the ALJ nor the Commission resolved the issues concerning appellee’s right wrist/thumb injury with specific findings of fact that would allow us to perform our review function. Consequently, we find it necessary to reverse and remand this case for the Commission to make such findings. Moreover, in order for this case not to be decided piecemeal on appeal, we remand it in its entirety and do not address at this time appellants’ remaining points of appeal concerning appellee’s low-back injury. *See Sonic Drive-In, supra.*

Reversed and remanded.

PITTMAN, C.J., and GLADWIN, J., agree.